

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAVIER TENORIO PLATA, an individual,
ALFONSO VICTOR INCLAN COSTA, an
individual, GERMAN VASQUEZ
FIGUEROA, an individual, MICHELL
ARIANNE CURTO GONGORA, an
individual, CARLOS ACEVEDO
MENDOZA, an individual, RUBEN
ARMAND ROBLES DIAZ, an individual,
GRACIELA HERRERA RODRIGUEZ, an
individual, MARIA DE LOS ANGELES
SANDOVAL, an individual, REINALDO
RODRIGUEZ VELASQUEZ, an individual,
BRAULIO ALBERTO DELGADO BRASIA,
an individual, FRANCISCA GASTELUM
ARAGON, an individual, MARIA DE LA
VILLANET SANCHEZ GUZMAN, an
individual, YADIRA CAMBREROS
PINEDA, an individual, REBECCA
GUTEIRREZ JUAREZ, an individual, and
MARTHA HUIZAR N., an individual,

Plaintiffs,

VS.

DARBUN ENTERPRISES, INC., a California corporation; OEM SOLUTIONS, LLC, a California limited liability company; and DOES 1 through 10, inclusive.

Defendants.

This is a diversity action in which Plaintiffs seek recognition of a foreign judgment pursuant to California Civil Procedure Code §§ 1713 et seq. Presently before the Court is a motion to dismiss

CASE NO. 10cv1339 - IEG (CAB)

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS FOR FAILURE TO JOIN
AN INDISPENSABLE PARTY**

[Doc. No. 5]

1 for failure to join an indispensable party brought by Defendant Darbun Enterprises, Inc. For the
 2 reasons discussed herein, the Court **GRANTS** Defendant's motion.

3 **BACKGROUND**

4 Plaintiffs are Mexican citizens seeking recognition of a foreign judgment against Defendant
 5 Darbun Enterprises LLC. On January 12, 2009, Plaintiffs filed a complaint in this Court in case
 6 number 09-cv-0044 ("original action"). The Court dismissed the original action on May 6, 2010
 7 because it determined that Plaintiff Delores Galvez Montes was a resident of California and her
 8 presence in the action destroyed diversity for jurisdictional purposes. (Doc. No. 120.) Following
 9 dismissal, on May 21, 2010, Defendant filed a motion for sanctions, arguing that opposing counsel's
 10 bad faith in filing and maintaining the original action in federal court was in bad faith in that it
 11 recklessly multiplied the proceedings. (Doc. No. 122.) On June 25, 2010, Plaintiffs filed their
 12 opposition to Defendant's motion for sanctions in the original action. (Doc. No. 132.) In their
 13 opposition, Plaintiffs stated that the non-diverse parties would file an action in state court to enforce
 14 the judgment and then request a stay pending resolution of this action.¹ (See id.) On August 13, 2010,
 15 the Court granted the Defendant's motion for sanctions in the original action. (Doc. No. 138.)
 16 Plaintiffs have appealed and Defendant filed a cross-appeal as to the amount of the award. (Doc. Nos.
 17 139, 149.)

18 On June 24, 2010, Plaintiffs filed the instant action. (Doc. No. 1.) The complaint in this action
 19 is substantively identical to the complaint in the original action, except the complaint in the original
 20 action included two additional Plaintiffs, Delores Galvez Montes and Luis Delgado Picasso.
 21 Defendant filed the present motion on November 10, 2010. (Doc. No. 5.) Plaintiff filed an opposition
 22 and Defendant filed a reply. (Doc. Nos. 6, 7.) The Court heard oral argument on December 13, 2010.
 23 (Doc. No. 9.)

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28 ¹ Defendant is unaware of any state court action having been filed. See Def.'s Mot. at 1.

DISCUSSION

I. Legal Standard

In a motion to dismiss for failure to join and indispensable party, the Court must engage in a two-part analysis. First the Court must determine if an absent party is “necessary to the suit.” Fed. R. Civ. P. 19(a). An absent party is “necessary to the suit” if:

(1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by result of the claimed interest.

Fed. R. Civ. P. 19(a).

If an absent party is necessary, and if that party cannot be joined,³ the Court must assess whether the party is indispensable so that “in equity and good conscience” the suit should be dismissed. Fed R. Civ. P. 19(b); Clinton v. Babbit, 180 F.3d 1081, 1088 (9th Cir. 1999) (quoting Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990)). The moving party has the burden of persuasion in arguing for dismissal. Clinton, 180 F.3d at 1088 (citation omitted).

In deciding whether the suit should be dismissed, the Court should consider (1) the extent to which a judgment rendered in the necessary party's absence would result in prejudice to that person or the existing parties; (2) the extent to which the Court may shape relief or otherwise avoid or reduce such prejudice; (3) whether a judgment rendered in the necessary party's absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for non-joinder. Fed. R. Civ. P. 19(b).

III. Analysis

Defendant maintains that all parties to the foreign judgment are joint obligees, and as such, the absent parties are indispensable parties under Nike, Inc., v. Comercial Iberica de Exclusivas Deportivas, S.A., 20 F.3d 987, 991 (9th Cir. 1994) and Bry-Man's, Inc. v. Stute, 312 F.2d 585, 587 (5th Cir. 1963). See Def.'s Mot. at 2; Def.'s Reply at 3.

³ In this case, however, there is no question that joinder is not feasible. Joinder would destroy diversity, as it did in the original action. See 28 U.S.C. § 1337(b).

1 Plaintiffs respond that the absent parties are not “necessary.” See Pl.’s Opp. at 2-5. To start,
 2 Plaintiffs contend that the absent parties are not necessary because their interests are adequately
 3 protected by the existing parties, and that the Court can protect the interests of the existing parties by
 4 ruling as to whether or not the Mexican judgment is valid. Id. at 2-3. Next, Plaintiffs argue that
 5 because the Mexican judgment specifies an award for each party, Defendant is mistaken in arguing
 6 that the parties to the Mexican judgment are joint obligees. Id. at 3. Because the awards are
 7 individualized, Plaintiffs also maintain there is no risk Defendant will be subject to inconsistent
 8 obligations. Id. at 4.

9 Plaintiffs argue that, of the four factors in Rule 19(b), only the last factor (whether the plaintiff
 10 would have an adequate remedy if the action were dismissed for nonjoinder) supports dismissal
 11 because, if the action were dismissed, Plaintiffs would have an adequate remedy by re-filing the action
 12 in the state court, and that none of the remaining factors supports dismissal. Id. at 5. Arguing there
 13 is no prejudice to the existing parties or absentees, Plaintiffs maintain the absentees would stipulate
 14 to be bound by the judgment of this Court, that the Court can find the absentees are in privity with the
 15 current Plaintiffs, or that the Court can require the absentees to be bound by the Court’s judgment.
 16 Id. at 6. Last, Plaintiffs argue any judgment rendered in the parties’ absence is adequate, since the
 17 Mexican judgment itemizes damages for each of the many Plaintiffs and the Court may award damages
 18 to the parties based on their individual entitlement. Id.

19 In its reply, Defendant argues that under California Code of Civil Procedure § 1719, the Court
 20 must either recognize the foreign judgment or not recognize the foreign judgment, and that there is no
 21 provision in the statute allowing courts to fashion new and/or separable judgments with varying relief,
 22 damages or parties. See Def.’s Reply at 1-2. As a consequence, Defendant raises the prospect that this
 23 Court could find the Mexican judgment enforceable in California while, at the same time, the state
 24 court could find the Mexican judgment is not enforceable. Id. Under those circumstances, Defendant
 25 contends it would be subject to inconsistent obligations under Rule 19(a). Id. Defendant also argues
 26 that the absent parties’ offer to file in state court and stipulate to be bound by the federal court ruling
 27 serves to demonstrate that they are indispensable parties. See id. at 3-4.

28 California Code of Civil Procedure § 1719 provides “If the court . . . finds that the
 foreign-country judgment is entitled to recognition under this chapter then, . . . the foreign country

1 judgment is both of the following: (a) Conclusive between the parties to the same extent as the
 2 judgment of a sister state . . . (b) Enforceable in the same manner and to the same extent as a judgment
 3 rendered in this state" (emphasis added).

4 Section 1719 does not specify whether the foreign judgment is conclusive between the (1)
 5 parties *to the foreign judgment* or (2) between the parties *to the case at bar*. If the first interpretation
 6 is correct, there is a substantial risk Defendant would incur inconsistent obligations in federal and state
 7 court—that is, an order stating the Mexican judgment is enforceable and an order stating the Mexican
 8 judgment is not enforceable. By contrast, if the second interpretation is correct, Defendant would not
 9 be subject to inconsistent obligations and, as a technical matter, the Court's ruling would not affect
 10 the absent parties' interests. However, Rule 19(a) establishes that an absent party is necessary if, "as
 11 a practical matter," a judgment will impair or impede the person's ability to protect that interest. As
 12 a practical matter, the Court's ruling on whether to recognize the Mexican judgment may impair or
 13 impede the absent parties' interests. In deciding whether to recognize the foreign judgment, the Court
 14 would not analyze the foreign judgment in reference to individual plaintiffs or individual damages
 15 awards; it would evaluate only the essential grounds for refusal of recognition, such as whether the
 16 foreign court had jurisdiction over the defendant, whether the foreign court had jurisdiction over the
 17 subject matter, and so on. See Cal. Civ. Proc. Code §§ 1713 et seq. As a consequence, whether or not
 18 the absent parties are named Plaintiffs in this case, the Court would inevitably decide issues directly
 19 affecting their interest in recognition of the Mexican judgment. Indeed, the absent parties have offered
 20 to "stipulate to be bound by the judgment entered in this Court," Pl.'s Opp. at 5, demonstrating that
 21 the parties' interests are "inextricably bound together in one cause," Bry-Man's, Inc. v. Stute, 312 F.2d
 22 585, 588 (5th Cir. 1963); American Ins. Co. v. Bradley Mining Co., 57 F. Supp. 545, 547-48 (D. Cal.
 23 1944).⁴ Under the circumstances of this case, the Court concludes the absent parties are necessary
 24 parties under Rule 19(a) and, in doing so, adheres to the interests furthered by Rule 19, which are "not
 25 only those of the parties but also that of the public in avoiding repeated lawsuits on the same essential

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 27 ⁴ The Court's inquiry under Rule 19(a) is not affected by the absent parties' offer to stipulate
 28 to be bound by the Court's judgment. Such an offer cannot confer jurisdiction where it does not
 otherwise exist. See Bender v. Williamsport Area School Dist., 475 U.S. 534, 541 (1986) (holding
 that "though the parties are prepared to concede it," the Court had an independent duty to evaluate
 whether it had jurisdiction under Article III of the Constitution and the statutes enacted by Congress
 pursuant thereto).

1 subject matter.” CP Nat'l Corp. v. Bonneville Power Admin., 928 F.2d 905, 912 (9th Cir. 1991)
 2 (citing Fed. R. Civ. P. 19 advisory committee’s note).

3 The Court has already determined that the absent parties cannot be joined. See Plata v. Darbun
 4 Enter., Inc., No. 09-cv-0044, 2010 WL 1875705, at *1 (S.D. Cal. May 6, 2010) (dismissing case for
 5 lack of subject jurisdiction). The only remaining question is therefore whether, under Rule 19(b) of
 6 the Federal Rules of Civil Procedure, equitable factors weigh in favor of dismissal. If this action were
 7 dismissed for nonjoinder, Plaintiffs would have an adequate remedy: re-filing this action in state court.
 8 As stated above, under California Civil Procedure Code § 1719, the Court is confined to a ruling that
 9 either recognizes or does not recognize the Mexican judgment. As a consequence, proceeding among
 10 the existing parties poses a substantial risk of prejudice to Defendant or the absent parties (depending
 11 on how the Court interprets the statute), and the Court is unable to grant relief in a fashion that would
 12 mitigate such risk. Accordingly, the Court concludes that this action should not proceed among the
 13 existing parties and **DISMISSES WITH PREJUDICE** Plaintiffs’ complaint.

14 **CONCLUSION**

15 For the foregoing reasons, the Court **GRANTS** Defendant’s motion and **DISMISSES**
 16 **WITH PREJUDICE** Plaintiffs’ complaint.

17 **IT IS SO ORDERED.**

18 **DATED: January 12, 2011**

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 20 IRMA E. GONZALEZ, Chief Judge
 United States District Court

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